

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Interstate Blood Bank, Inc.) Personal Property Account No. P-039545) Tax year 2004)	Shelby County
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INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$5,452,700	\$1,635,810

On December 29, 2004, the State Board of Equalization ("State Board") received an appeal by the current owner of this property.

The undersigned administrative judge conducted a hearing of this matter on November 29, 2006 in Memphis. The appellant, Interstate Blood Bank, Inc. ("IBB"), was represented at the hearing by registered agent Jerry Caruthers, of Caruthers & Associates, Inc. (Memphis). Assistant County Attorney Thomas Williams appeared on behalf of the Shelby County Assessor of Property. Also in attendance at the hearing were the Assessor's Director of Finance Gwendolyn Cranshaw, CPA and Audit Manager Eric Beaupre, CPA.

The last document constituting part of the record in this case – the taxpayer's response to the Assessor's post-hearing brief (signed by Fred M. Ridolphi, Jr., Esq.) – was postmarked December 18, 2006.

Findings of Fact and Conclusions of Law

Oddly, this complaint is predicated on the Assessor's rejection of an amended tangible personal property schedule that was not submitted by the filer of the original return.

As of January 1, 2004, the property in question was located in an idle plasma testing facility at 5700 Pleasant View Road in Memphis. This facility was formerly owned by the California-based Alpha Therapeutic Corporation ("Alpha"). Alpha apparently sold the property and business to the Baxter Healthcare Corporation ("Baxter") of Illinois on October 17, 2003. That same day, Baxter subsidiary Biolife Plasma Services L.P. ("Biolife") and IBB entered into an Asset Purchase Agreement whereby the latter would acquire the "Memphis Laboratory" – defined in Section 1.1 of the Agreement to include "all real and personal property rights" relating to this plasma testing facility – for \$1,500,000. Exhibit 3. However, Section 2.2 of the Agreement specifically excluded certain items (e.g., "tecan pipetting devices"; leased equipment; and reagents) from the sale.

The preamble to the Asset Purchase Agreement recited that “the Parties expect Buyer to promptly wind down the Business” after completing the testing of all plasma already in the system. But the closing of the real estate transaction did not occur until January 22, 2004. In the interim, as contemplated in Section 2.1(a) of the Agreement, IBB occupied and used the Memphis Laboratory under a one-dollar Ground Lease (also dated October 17, 2003).¹ Exhibit 4. Section 7.3 of this Lease required IBB to pay “all taxes, assessments and other charges imposed or levied upon any personal property situated in, on or about the Premises.”

According to the testimony of IBB controller Leslie Kaplan, the Memphis Laboratory had shut down prior to January 1, 2004; and the existing inventory of raw materials had been depleted. Further, in response to the seller’s request pursuant to Sections 5.10—5.13 of the Asset Purchase Agreement, the personal property belonging to Biolife had been packaged and readied for shipment to Illinois. Not until early 2005, however, was such equipment physically removed from the premises.

On February 23, 2004, Alpha’s tax manager Cecilia Chu signed and returned the tangible personal property schedule for tax year 2004 which had been furnished to the corporation by the Assessor’s office. Exhibit 5. Although Ms. Chu indicated on the form that the business had been sold to Baxter, the Assessor assessed the subject property to Alpha in the amount shown above based on the printed “cost on file” information.² *Neither Alpha nor Baxter or IBB contested the Assessor’s value before the Shelby County Board of Equalization.*

On August 31, 2004, Mr. Kaplan filed with the Assessor a proposed amendment to the Alpha tangible personal property schedule. This amendment purported to list only those items that IBB had actually purchased from Biolife. Based on Alpha’s book values for those items, IBB requested that the appraisal on the subject account be drastically reduced to \$505,500. Mr. Kaplan was notified of the Assessor’s refusal to adjust the original assessment on November 18, 2004, giving rise to this appeal.

Mr. Caruthers conceded at the hearing that IBB should have reported its original cost (not the book value) for the assets itemized on the “amended” return. Exhibit 2. He contended, however, that the items excluded from the Asset Purchase Agreement were wrongfully assessed because they were not used or held for use at the Memphis Laboratory on the January 1, 2004 assessment date.

Article II, section 28 of the Tennessee Constitution states (in relevant part) that “all property real, personal or mixed shall be subject to taxation” unless exempted by the legislature. Most real and tangible personal property in this state is assessed “to the person or persons

¹The Ground Lease automatically terminated upon the transfer of title to the Memphis Laboratory from Biolife to IBB.

²Handwritten on the portion of the schedule reserved for the Assessor’s use were the notations “no proof of sale” and “buyers state did not buy until the middle of January.”

owning or claiming to own the same on January 1 of the year for which the assessment is made.” Tenn. Code Ann. section 67-5-502(a)(1). However, Tenn. Code Ann. section 67-5-901(b) provides that “[l]eased personal property in the possession of the lessee shall be classified and assessed according to the use of the lessee.” See *a/so* Tenn. Code Ann. section 67-5-502(c). Among the examples of leased personal property specified in Tenn. Code Ann. section 67-5-904(a)(2) is “[e]quipment that is leased at nominal rent or loaned under certain circumstances.”

By March 1 of each year, all legal entities engaged in a business or profession in this state must submit to the assessor on the prescribed form a list of all owned and leased tangible personal property used or held for use in such business or profession, excluding finished goods in the hands of a manufacturer and inventories of merchandise held for sale or exchange. Tenn. Code Ann. sections 67-5-903 and 904. In pertinent part, Tenn. Code Ann. section 67-5-903(e) reads as follows:

The taxpayer may amend a personal property schedule **previously filed with the assessor** at any time until September 1 following the tax year. If the assessor agrees with the amended schedule, the assessor shall thereupon revise the assessment and certify the revised assessment to the trustee. If the assessor believes the assessment should be otherwise than claimed in the amended schedule, the assessor shall adjust the assessment and give written notice to the taxpayer of the adjustment. The taxpayer may appeal the assessor’s adjustment of or refusal to accept an amended assessment schedule to the local and state boards of equalization in the manner otherwise provided by law. [Emphasis added.]

As the party seeking to change the present valuation of the subject property, IBB has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

The appellant maintains that “[t]here is no distinction between filing an appeal and filing an amended schedule.” Response to Brief Filed by Assessor of Property, p. 2. Respectfully, the administrative judge disagrees.

Tenn. Code Ann. section 67-5-1412(f) defines the word “taxpayer” to include a lessee who is legally obligated to pay all of the taxes for which the property in question is liable. This definition effectively confers standing on a lessee of property to appeal the assessment of such property to the county and state boards of equalization, **subject to all applicable statutory conditions and deadlines**. By its express terms, though, the definition only applies insofar as the word “taxpayer” is used in **parts 14 and 15** of title 67, chapter 5 of the Tennessee Code. The assessment of commercial and industrial tangible personal property is governed elsewhere by Tenn. Code Ann. sections 67-5-901 *et seq.*

Generally, except in the event of insufficient or untimely notice of a change in classification or valuation, an appeal to the local board of equalization is a jurisdictional prerequisite for an appeal to the State Board. See Tenn. Code Ann. sections 67-5-1401 and

67-5-1412(b); Tenn. Atty. Gen. Op. 92-62 (October 8, 1992). In this instance, the Assessor was hardly obliged to notify *IBB* of the assessment of the subject property made to *Alpha*. After all, despite admittedly holding an assessable interest in at least some of that property, *IBB* had not even filed a personal property schedule for the Memphis Laboratory with the Assessor's office. Nor was *IBB* mentioned anywhere on the schedule which *Alpha* *did* file. That *IBB*, unbeknownst to the Assessor, had contractually agreed to pay the taxes on such property is immaterial.

To be sure, Tenn. Code Ann. section 67-5-903(e) does permit a "taxpayer" to appeal the rejection of an amended personal property schedule directly to the State Board. The administrative judge is not persuaded, however, that the General Assembly ever intended to allow such an appeal by a **non-reporting** taxpayer on the basis of an "amendment" to another taxpayer's return. In the context of Tenn. Code Ann. section 67-5-903(e), the right of the "taxpayer" to amend a personal property schedule – and appeal the assessor's action on the amended schedule – must be construed as limited to the entity (or an affiliate or successor thereof) which filed the original return. The appellant's contrary view would leave a taxpayer who complies with the statutory reporting requirement vulnerable to a potentially objectionable "amendment" of its schedule by an unrelated and possibly unknown transferee.³

The issue here, it should be emphasized, is not whether a post-assessment date purchaser of property already under appeal to the State Board may be substituted for the property owner who initiated the appeal. Compare Wang's International (Shelby County, Tax Year 2000, Order Allowing Substitution of Parties, March 25, 2004). It is also important to distinguish between the *taxpayer* responsible for reporting the tangible personal property used in a business and the *business* itself. A taxpayer may, of course, have multiple places of business. Conversely, all personal property items at a single business location may not necessarily be assessable to be the same taxpayer. See, e.g., Nissan North America, Inc. v. Haislip, 155 S.W.3rd 104 (Tenn.Ct.App. 2004). Thus, contrary to Mr. Caruthers' suggestion at the hearing, *Alpha's* schedule cannot be deemed to have been filed on his client's behalf. The fact that *Alpha* filed a timely return with respect to 5700 Pleasant View did not relieve *IBB* of the duty to report its owned or leased personal property at that location.

In the opinion of the administrative judge, then, the disputed assessment has become final because: (a) it was not appealed to the county board of equalization; and (b) it cannot be reopened on the pretext of an "amendment" to a schedule that the aggrieved party failed or neglected to file before the statutory deadline. The administrative judge need not decide whether *IBB* would have been entitled to any relief had this appeal been properly before the State Board.

³An amended schedule could result in additional tax liability if, for example, it is claimed that certain property was erroneously classified for assessment purposes.

Order

It is, therefore, ORDERED that the following values be adopted for tax year 2004:

APPRAISAL	ASSESSMENT
\$5,452,700	\$1,635,810

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 16th day of February, 2007.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Fred M. Ridolphi, Jr., Esq., Farris Mathews Branan Bobango Hellen & Dunlap PLC
Jerry Caruthers, of Caruthers & Associates, Inc.
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